

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 15-7136

UNITED STATES OF AMERICA,

Appellee,

v.

JEFFREY R. MACDONALD

Appellant.

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**APPELLANT’S MOTION TO EXTEND TIME  
TO FILE INFORMAL OPENING BRIEF**  
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NOW COMES APPELLANT Jeffrey R. MacDonald, through undersigned counsel, and respectfully moves this Court for an extension of forty-five (45) days, to and including November 12, 2015, to file Appellant’s Informal Opening Brief in this matter. In support of this Motion, Appellant shows the Court the following:

1. Appellant was convicted in the United States District Court for the Eastern District of North Carolina in August 1979 of one count of first degree murder and two counts of second degree murder, involving the deaths of his wife and young daughters. This appeal is the appeal of the district court’s order denying Appellant’s Motion to Vacate his Conviction under 28 U.S.C. § 2255, after an

evidentiary hearing on remand resulting from this Court's most recent opinion in this matter. *See United States v. MacDonald*, 641 F.3d 596 (4th Cir. 2011). Appellant filed a timely Notice of Appeal from the district court's order denying his § 2255 motion on July 16, 2015.

2. On July 21, 2015, this Court entered an informal preliminary briefing order in this appeal, setting the deadline for the filing of an informal opening brief by Appellant for August 14, 2015.

3. Undersigned counsel filed a Notice of Appearance to represent Appellant in this appeal on August 10, 2015.

4. On August 10, 2015, Appellant moved for an extension of time of sixty (60) days to prepare and file the informal opening brief in this matter, in light of the extraordinarily voluminous record at issue in this appeal and undersigned counsel's unfamiliarity with the evidentiary hearing at issue in this appeal.

5. On August 10, 2015, this Court entered an order granting the motion in part, and extending the deadline for the filing of Appellant's Informal Opening Brief by forty-five (45) days to September 28, 2015.

6. Undersigned counsel has diligently worked on this matter, but additional time is necessary to complete review of the record in this matter and to draft and file the Informal Opening Brief in this matter, for the following reasons:

a. The record at issue in this appeal of Appellant's murder convictions is extraordinarily voluminous. The evidentiary hearing on the § 2255 Motion at issue in this appeal took seven (7) court days, resulting in seven volumes of transcript. The exhibits introduced by the parties at that evidentiary hearing are contained in sixteen (16) multi-inch binders, containing thousands of pages of documents. The relevant post-hearing briefing by the parties in the district court totals several hundred pages of documents. All of this material must be reviewed by undersigned counsel (who was not involved in the evidentiary hearing on the § 2255 Motion) in order to fully represent Appellant in this appeal. In addition, the entire record of this now 35+ year case is relevant to this appeal, under the "evidence as a whole" standard at issue in habeas cases. The vast volume of this material far outweighs anything close to what is at issue in a typical criminal appeal.

b. Undersigned counsel has briefing obligations in other cases that interfere with the current deadline in this case. Undersigned counsel represents the appellant in another criminal appeal pending in this Court, *United States v. Lull*, No. 15-4216, wherein the Government will be filing its Response Brief on September 16, 2015. Undersigned counsel will then be drafting and filing a Reply Brief in that matter by September 28, 2015. In

addition, undersigned counsel is currently drafting substantial pretrial motions in two separate felony criminal matters pending in the United States District Court for the Eastern District of North Carolina (*United States v. Dixon*, EDNC No. 5:15-CR-166-3-BR and *United States v. Godwin*, 5:15-CR-115-2-D) with filing deadlines of September 21, 2015 and September 30, 2015 respectively. Undersigned counsel's obligations in those cases interferes with his ability to complete the Informal Opening Brief in this case by the current deadline of September 28, 2015.

c. Appellant has served more than 30 years in prison in this case as a result of his convictions for the murders of his family, and this appeal directly challenges those convictions. Given the importance of this matter, both to Appellant and the Government, undersigned counsel wishes to ensure that he fully and completely reviews all relevant material prior to the completion of the Informal Opening Brief.

4. For these reasons, Appellant respectfully requests an extension of time of forty-five (45) days to prepare and file the informal opening brief in this matter, to and including November 12, 2015.

5. Undersigned counsel has contacted AUSA John Bruce, one of the prosecutors handling this matter, regarding this Motion, and Mr. Bruce states that the Government does not oppose this Motion.

WHEREFORE, Appellant respectfully requests that this Motion be granted, and that the deadline for the filing of the informal opening brief be extended by forty-five (45) days, to and including November 12, 2015.

This the 15th day of September, 2015.

/s/ Joseph E. Zeszotarski, Jr.  
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#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION was served through the electronic service function of the Court's electronic filing system, addressed as follows:

John Bruce  
Assistant United States Attorney  
310 New Bern Avenue  
Raleigh, NC 27601

This the 15th day of September, 2015.

/s/ Joseph E. Zeszotarski, Jr.  
Counsel for Appellant